

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CASE NO. 3:23-CV-422-MOC-DCK**

NADINE BALLARD, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A., *et al.*

Defendants.

Case No. 3:23-cv-422-MOC-DCK

**AMENDED MOTION TO CONSOLIDATE AND
APPOINT INTERIM LEAD COUNSEL**

Plaintiff in the above-captioned case, through undersigned counsel, hereby moves this Court for an Order consolidating this case with *Magers, et al. v. Bank of America, N.A., et al.*, Case No. 3:23-cv-459 (filed July 25, 2023) and *Jones, et al. v. Bank of America, N.A., et al.*, No. 3:23-cv-00491 (filed August 4, 2023), and appointing Interim Lead Counsel in the consolidated case, pursuant to Fed. R. Civ. P. 23(g), and 42(a) and LCvR 42.1. A copy of the proposed Order for this Amended Motion is being submitted through Cyberclerk, pursuant to LCvR 5.2.1(b) and LCvR 7.1(g). In support of Plaintiff's Amended Motion, Plaintiff shows as follows:

1. Plaintiff seeks consolidation of three putative class action cases pending in this Court involving common issues of law and fact, namely: *Nadine Ballard, et al. v. Bank of America, N.A., et al.*, No. 3:23-cv-422-MOC-DCK (Filed July 13, 2023) ("*Ballard*"), *Jason Robert Magers, et al. v. Bank of America, N.A., et al.*, Case No. 3:23-cv-459 ("*Magers*") and *Mia Jones, et al. v. Bank of America, N.A., et al.*, No. 3:23-cv-00491 ("*Jones*").

2. A previous Motion to Consolidate and Appoint Interim Lead Counsel (Doc. 18) and Memorandum in Support (Doc. 19) were filed in *Ballard* on August 4, 2023; a previous Notice of Filing Motion to Consolidate was filed in *Magers* on August 4, 2023. The *Jones* action was filed on the same day.

3. Pursuant to LCvR 42.1, this Amended Motion to Consolidate cases is being filed in *Ballard*, with an Amended Notice of Filing being filed in the *Magers* action and a Notice of Filing being filed in the *Jones* action.

4. As of the filing of this Amended Motion, Plaintiff is unaware of any *additional* actions pending in this District which may involve common issues of fact and law.¹

5. Here, all three of the putative class actions assert similar claims arising from Defendant Bank of America, N.A.’s and Defendant Bank of America Corporation’s (collectively, “Defendants”) conduct related to Defendants’ actions in opening financial accounts on behalf of the Plaintiffs and putative class members without their knowledge, authorization or consent. Accordingly, the Plaintiff respectfully shows that these three actions should be consolidated for all purposes pursuant to Fed. R. Civ. P. 42(a).

6. Under Fed. R. Civ. P. 23(g)(3), “[t]he court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.” In so appointing, the Court may consider factors relating to the prospective counsel’s reputation and skills. *See* Rule 23(g)(1).

7. Here, the undersigned attorneys for the Plaintiffs in the three putative class actions respectfully, jointly request that the Court appoint Marc E. Dann of DannLaw, Jennifer S. Czeisler

¹ *Christensen v. Bank of America, N.A.* (No. 3:23-cv-468), has been filed in the Western District against these Bank of America. That case, however, centers on the Defendants’ alleged false advertising and failure to pay sign-up bonuses for rewards credit cards, and therefore does not involve common issues of law and fact as the cases *sub judice*.

of Sterlington PLLC and Charles E. Schaffer of Levin Sedran & Berman LLP as interim Co-Lead Counsel pursuant to Civ. R. 23(g), appoint Joel R. Rhine of Rhine Law Firm, P.C. as interim liaison counsel, and appoint Olivia B. Smith of Wallace and Graham, P.A., Israel David of Israel David LLC, Jim Evangelista of Evangelista Worley LLC, Scott Harris of Milberg Coleman Bryson Phillips Grossman, PLLC, Jeffrey S. Goldenberg of Goldenberg Schneider, L.P.A., Joseph M. Lyon of The Lyon Firm and D. Aaron Rihn of Robert Peirce & Associates, P.C. to the Plaintiffs' Executive Committee with Israel David being appointed as Chairman of the Executive Committee. The Professional biographies for these attorneys and firms are attached hereto as Exhibits 1-11.

8. Plaintiffs' Counsel in the *Ballard*, *Magers* and *Jones* matters have met and conferred with regard to this Amended Motion.

9. Counsel for Plaintiffs has conferred with incoming counsel for Defendant who advised Defendant does not object to the three cases being consolidated but will oppose other aspects of the motion.

WHEREFORE, the Plaintiff respectfully requests that the Court enter an order consolidating these matters and appointing interim counsel as requested. A proposed Order on this Amended Motion is submitted herewith for the Court's consideration.

DATED: August 18, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2023, I have served a copy of the foregoing document
on all counsel of record by ECF filing, email and U.S. mail including to:

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